

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 391 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHARADBHAI CHAGANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 391 of 2002
MR YOGESH S LAKHANI for Petitioner No. 1
MR PR ABICHANDANI, APP, for Respondent No. 1
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/10/2002

ORAL JUDGEMENT

1. Rule. Learned Additional Public Prosecutor, Mr. Abichandani, waives service of notice of Rule on behalf of the respondent-State. With the consent of learned

Advocates for the parties, the matter is taken up today for final hearing.

2. The revisioner-original complainant is aggrieved by an order passed by the learned Judicial Magistrate, First Class, Baroda, in a private complaint No.0-58/2002 preferred against 14 accused persons, wherein the learned Magistrate ordered to hold an inquiry himself. The revisioner, therefore, tendered an application (Ex.4) in the said complaint, requesting the Trial Court to send the complaint for investigation by police in exercise of powers under Section 156(3) of the Code of Criminal Procedure. The learned Magistrate, however, rejected the said application. The revisioner has, therefore, preferred this revision challenging both the said orders.

3. Learned Advocate, Mr. Gondalia, appearing for the revisioner, submitted that, if the complaint is examined, it is clear that it requires a detailed investigation which would call for drawing of Panchnama and recovery/discovery of the muddamal. This could be carried out more effectively by police agency rather than a Court and by the time the inquiry is concluded and some order is passed by the Magistrate, the muddamal may be disposed of and the complaint may get frustrated. The offences complained of are of serious nature, namely, offences punishable under Sections 447, 448, 452, 395, 506(2), 323, 342, 504, 143, 147, 148, 149 and 114 of the Indian Penal Code read with Section 135 of the Bombay Police Act. These aspects are not considered by the Trial Court and, therefore, this revision may be accepted.

4. Learned Additional Public Prosecutor, Mr. Abichandani, appearing for the State, opposes this application.

5. Having gone through the complaint and the orders impugned, this Court is of the view that the complaint requires the investigation of a detailed nature, including drawing of Panchnama and recovery/discovery of muddamal, if any. The case involves a large stake and variety of materials. Some quick action in the field would be necessary in the matter, if there is substance found in the complaint. Under the circumstances, the inquiry ordered by the learned Magistrate may not be sufficient to cater to the requirement of the stake and, therefore, there is substance in the revision. The ends of justice would be frustrated, if quick action is not taken. If inquiry is held and, if there is substance in the complaint, the accused persons would be facilitated

to dispose of the muddamal and cover up their action. The complainant would be denied his right of redressal. In order to prevent this certain miscarriage of justice, interference is called for in the facts and circumstances of the case. The revision, therefore, deserves to be allowed.

6. The revision is allowed. The orders impugned herein, passed by the learned Judicial Magistrate, First Class, at Baroda, below Ex.1 and 4 in Inquiry Case No.0-58 of 2002, dated 30.8.2002 and 3.9.2002, respectively, are hereby quashed and set aside. The complaint is directed to be sent to the police agency for due investigation under Section 156(3) of the Code of Criminal Procedure. The order would be passed by the learned Magistrate within a week from the date of receipt of writ of this Court. Rule is made absolute.

7. Direct service is permitted.

[A.L. DAVE, J.]

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